

LEGISLATURE OF THE STATE OF IDAHO
Sixty-first Legislature First Regular Session - 2011

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 24

BY RESOURCES AND CONSERVATION COMMITTEE

AN ACT

RELATING TO WATER; AMENDING SECTION 42-203A, IDAHO CODE, TO DELETE THE REQUIREMENT THAT COPIES OF NOTICES BE SENT BY ORDINARY MAIL TO CERTAIN PERSONS, TO PROVIDE FOR NOTICES THAT ARE ACCESSIBLE FROM THE INTERNET HOMEPAGE OF THE DEPARTMENT OF WATER RESOURCES, TO CLARIFY THAT PUBLISHED NOTICES ARE THE OFFICIAL NOTICES AND TO PROVIDE THAT ANY ERRORS OR OMISSIONS IN NOTICES ACCESSIBLE FROM THE INTERNET HOMEPAGE SHALL NOT INVALIDATE THE PUBLISHED NOTICES.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 42-203A, Idaho Code, be, and the same is hereby amended to read as follows:

42-203A. NOTICE UPON RECEIPT OF APPLICATION -- PROTEST -- HEARING AND FINDINGS -- APPEALS. (1) Upon receipt of an application to appropriate the waters of this state, the department of water resources shall prepare a notice in such form as the department may prescribe, specifying: (a) the number of the application; (b) the date of filing thereof; (c) the name and post-office address of the applicant; (d) the source of the water supply; (e) the amount of water to be appropriated; (f) in general the nature of the proposed use; (g) the approximate location of the point of diversion; and (h) the point of use. The department shall also state in said notice that any protest against the approval of such application, in form prescribed by the department, shall be filed with the department within ten (10) days from the last date of publication of such notice.

(2) The director of the department of water resources shall cause the notice to be published in a newspaper printed within the county wherein the point of diversion lies or, in the event no newspaper is printed in said county, then in a newspaper of general circulation therein. When the application proposes a diversion in excess of ten (10) c.f.s. or one thousand (1,000) acre feet, the director shall cause the notice to be published in a newspaper or newspapers sufficient to achieve statewide circulation. Any notice shall be published at least once each week for two (2) successive weeks.

(3) The director of the department shall also cause a copy of the notice of the application to be sent by ordinary mail to any person who requests in writing to receive any class of notices of application and who pays an annual mailing fee as established by departmental regulation accessible from the department's internet homepage beginning on or before the date the application is first published in the newspaper as described in subsection (2) of this section, and ending no sooner than the deadline for protesting the application, consistent with subsection (1) of this section. Notice accessible from the internet homepage may be represented by an abstract, summary, or other such representation that includes all the information required by

1 subsection (1) of this section for notice of an application. The notice pub-
2 lished in the newspaper pursuant to subsection (2) of this section shall be
3 the official notice. Errors or omissions in the notices accessible from the
4 internet homepage shall not invalidate the published notice.

5 (4) Any person, firm, association or corporation concerned in any such
6 application may, within the time allowed in the notice of application, file
7 with said director of the department of water resources a written protest,
8 together with the statutory filing fee as provided in section 42-221, Idaho
9 Code, against the approval of such application, which protest shall state
10 the name and address of protestant and shall be signed by him or by his agent
11 or attorney and shall clearly set forth his objections to the approval of
12 such application. Hearing upon the protest so filed shall be held within
13 sixty (60) days from the date such protest is received. Notice of this hear-
14 ing shall be given by mailing notice not less than ten (10) days before the
15 date of hearing and shall be forwarded to both the applicant and the protes-
16 tant, or protestants, by certified mail. Such notice shall state the names
17 of the applicant and protestant, or protestants, the time and place fixed for
18 the hearing and such other information as the director of the department of
19 water resources may deem advisable. In the event that no protest is filed,
20 then the director of the department of water resources may forthwith approve
21 the application, providing the same in all respects conforms with the re-
22 quirements of this chapter, and with the regulations of the department of wa-
23 ter resources.

24 (5) Such hearing shall be conducted in accordance with the provisions
25 of section 42-1701A(1) and (2), Idaho Code. The director of the department
26 of water resources shall find and determine from the evidence presented to
27 what use or uses the water sought to be appropriated can be and are intended
28 to be applied. In all applications whether protested or not protested, where
29 the proposed use is such: (a) that it will reduce the quantity of water un-
30 der existing water rights, or (b) that the water supply itself is insuffi-
31 cient for the purpose for which it is sought to be appropriated, or (c) where
32 it appears to the satisfaction of the director that such application is not
33 made in good faith, is made for delay or speculative purposes, or (d) that
34 the applicant has not sufficient financial resources with which to complete
35 the work involved therein, or (e) that it will conflict with the local pub-
36 lic interest as defined in section 42-202B, Idaho Code, or (f) that it is
37 contrary to conservation of water resources within the state of Idaho, or
38 (g) that it will adversely affect the local economy of the watershed or lo-
39 cal area within which the source of water for the proposed use originates,
40 in the case where the place of use is outside of the watershed or local area
41 where the source of water originates; the director of the department of wa-
42 ter resources may reject such application and refuse issuance of a permit
43 therefor, or may partially approve and grant a permit for a smaller quantity
44 of water than applied for, or may grant a permit upon conditions. Provided
45 however, that minimum stream flow water rights may not be established under
46 the local public interest criterion, and may only be established pursuant to
47 chapter 15, title 42, Idaho Code. The provisions of this section shall apply
48 to any boundary stream between this and any other state in all cases where the
49 water sought to be appropriated has its source largely within the state, ir-
50 respective of the location of any proposed power generating plant.

1 (6) Any person or corporation who has formally appeared at the hear-
2 ing, aggrieved by the judgment of the director of the department of water
3 resources, may seek judicial review thereof in accordance with section
4 42-1701A(4), Idaho Code.